

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2012-010276-001 DT

07/01/2014

HONORABLE BRUCE R. COHEN

CLERK OF THE COURT  
M. Lopez  
Deputy

STATE OF ARIZONA

EDWARD G PAINE  
RICHARD D COFFINGER

v.

JEFFREY DAVID MEYN (001)

ROBERT L STORRS  
STACY LYNN HYDER

**ORAL ARGUMENT**

**RULING ON STANDING RE: RESTITUTION AND IMPACT OF RELEASE**

11:01 a.m.

Courtroom SCT6B

State's Attorney:	Edward Paine
Defendant's Attorney:	Robert Storrs and Stacy Hyder
Defendant:	Present
Victims Attorney	Richard Coffinger

Court Reporter, Gail Ferguson, is present.

A record of the proceeding is also made by audio and/or videotape.

This is a time set for Oral Argument.

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Mr. Richard Coffinger is representing the victims, Lindsey Ruthe and Samantha Ruthe.

Argument commences.

IT IS ORDERED taking this matter under advisement.

12:04 a.m. Matter concludes.

**LATER:**

There are restitution claims being brought by and on behalf of the victims that remain outstanding. Before considering the substance and merits of the restitution claims, there are threshold legal issues that must be addressed.

The Court has considered the arguments of counsel during the proceedings of July 1, 2014, including the attorney for the victims, as well as the pleadings that have been filed to date. From that, the two issues that are ripe for determination are: (1) the standing of Mr. Coffinger (attorney of record for victims) to serve as a factual and legal advocate during substantive restitution proceedings; and (2) whether the release signed by the victims in May of 2014 preclude the restitution claims (all or part) from being asserted at this time. There is a third issue relating to the permissible scope of the restitution claim, which shall be addressed following the further argument scheduled for July 11, 2014.

**STANDING**

Victims of crime have the right to counsel. That is indisputable. The question presented is whether retained counsel by the victim has the right to conduct proceedings that impact the substantive rights of the victims.

The court has considered the case law cited by each party along with the various interpretations and inferences made from applicable statutes. Following the analysis, the court finds that *State v Lamberton*, 183 Ariz. 47, 899 P.2d. 939 (1995) provides the most salient direction. The *Lamberton* court held as follows:

In civil cases, a “party” is someone who is directly interested in the subject matter of the suit, has a right to control the proceedings, to plead defenses, and to examine or cross-examine witnesses. See *Helge v. Druke*, 136 Ariz. 434, 437, 666 P.2d 534, 537 (App.1983); *Chalpin v. Mobile Gardens, Inc.*, 18 Ariz.App. 231, 234, 501 P.2d 407, 410 (1972); see also *Republic Ins. Co. v. Feidler*, 178 Ariz. 528, 533, 875 P.2d 187, 192 (App.1993) (holding

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that victim was not party to criminal proceeding and had no opportunity to litigate issues). Here, neither the VBR nor the VRIA gives victims a right to control the proceedings, to plead defenses, or to examine or cross-examine witnesses; the VBR and the VRIA give victims the right to participate and be notified of certain criminal proceedings. This is not the same as making victims “parties.” ...

The California Supreme Court has held that a victim is not a party to criminal proceedings because “neither a crime victim nor any other citizen has a legally enforceable interest, public or private, in the commencement, conduct, or outcome of criminal proceedings against another.” Dix v. Superior Court, 53 Cal.3d 442, 279 Cal.Rptr. 834, 807 P.2d 1063, 1066 (1991). The parties to a criminal action are the defendant and the state. *Id.* “No private citizen, however personally aggrieved, may institute criminal proceedings independently, and the prosecutor's own discretion is not subject to judicial control at the behest of persons other than the accused.” *Id.* (citations omitted). ... (t)he simple fact that the State has commenced a proceeding does not entitle the Victim to commence another proceeding by filing her own petition for review. The VBR does not give the Victim the right to initiate criminal proceedings against a person, nor does it make the Victim a “party” to all proceedings involving that defendant.

*At 49-50*

The Court finds further guidance through ARS §13-4437. In pertinent part, it provides as follows:

**A.** The victim has standing to seek an order, to bring a special action or to file a notice of appearance in an appellate proceeding seeking to enforce any right or to challenge an order denying any right guaranteed to victims under the victims' bill of rights, article II, § 2.1, Constitution of Arizona, any implementing legislation or court rules. In asserting any right, the victim has the right to be represented by personal counsel at the victim's expense.

**C.** At the request of the victim, the prosecutor may assert any right to which the victim is entitled.

It is the Court’s reading of the statute that subsection A empowers a victim to take independent action if there is any violation of victim’s rights. This does not confer additional

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rights to participate in proceedings; rather, it is solely for enforcement of enumerated rights. Subsection C allows the prosecutor to seek enforcement of those same rights.

If counsel is retained by any victim, the role of that attorney is to preserve and protect the enumerated rights of victims. This is a far cry from concluding that the attorney has the same role as the prosecutor. The Court is unable to find that there is an independent right to serve any role as a party to the proceedings, including such tasks as examining witnesses. Had the legislature intended an expansive role of this nature, it would have so stated.

**IT IS THEREFORE ORDERED** that Mr. Coffinger shall not be entitled to offer evidence, examine witnesses or present arguments as to the substantive restitution claims being brought herein. His role may include providing out-of-court assistance to the assigned prosecutor and presence at all proceedings to ensure that all victim rights are being protected. He is further precluded from submitting any substantive pleadings other than those necessary to ensure that victim rights are being protected. As for any pleadings submitted to date, they shall not be stricken from the record (as requested by defense counsel) as the court is able to consider those matters that are and are not properly before the court.

**EFFECT OF RELEASE**

For the purpose of this proceeding, the Court is accepting the Release and Settlement Agreement (“Release”) that was attached to a pleading filed by Mr. Coffinger on June 9, 2014. There is language therein that would appear to waive any further claims against Defendant as part of the settlement with the insurance carrier. However, for two specific reasons, the Court finds that there is no release that would preclude the restitution claims that are being brought at this time.

First, the plain language of the Release states that it does “not release, acquit, or forever discharge any criminal restitution claims, other than as provided in Arizona Revised Statute § 13-807, resulting from the accident involving decedent...” There is nothing ambiguous about this provision.

Second, there is case law that also supports the rights of the victims to bring their restitution claims, regardless of whether there has been a civil claim that has been resolved. In *State v Iniguez*, 169 Ariz. 533, 821 P.2d. 194 (1991), the court held:

Restitution and civil damages are independent under Arizona law, and the state's power to order restitution does not bar a victim from seeking damages in a civil action. A.R.S. § 13–807; Pearce, 156 Ariz. at 289, 751 P.2d at 605. We believe the converse is also often true. Because restitution also promotes the rehabilitative purpose of the criminal law, and because civil damage payments may not be fully compensatory, the court is not

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automatically foreclosed from ordering some restitution simply because the victim has received some compensation as a result of a civil action. *at page 536*

Accordingly, the victims are not precluded by the Releases from pursuing all or parts of their restitution claims.

**LOST WAGE CLAIM**

The victims are bringing a claim for the loss of future earnings of Mr. Roof. This issue shall be the subject of further oral argument on July 11, 2014. While not by any means deciding the issue and in deference to the fact that both sides have not yet had the opportunity to argue this issue, the court finds it to be appropriate to set forth some preliminary thoughts on whether a victim related to the deceased can bring a claim for the loss of future earnings.

Restitution is a mandatory part of criminal proceedings, and a family member of a deceased victim is entitled to be reimbursed for the full amount of the economic loss suffered as a result of the crime committed by the defendant. See *State v Lindsley*, 191 Ariz. 195, 953 P.2d. 1248 (1997) and *State v Barrs*, 172 Ariz. 42, 833 P.2d. 713 (1992). The purpose of restitution is to make the victim whole. *State v Francher*, 169 Ariz 266, 818 P.2d. 251 (1991). Appellate courts will uphold a trial court's determination of what is part of the full economic loss so long as it bears a reasonable relationship to the victim's loss. *State v Madrid*, 207 Ariz. 296, 85 P.3d. 1054 (2004). Unlike the other aspects of the criminal proceeding, the burden of proof for the extent of the economic loss is by a preponderance of the evidence. See *In Re Stephanie B.*, 204 Ariz. 466, 65 P.3d. 114 (2003).

As defined in A.R.S. § 13-105(16), economic loss encompasses "any loss incurred by a person as a result of the commission of an offense. Economic loss includes lost interest, **lost earnings** and other losses which would not have been incurred but for the offense." (emphasis added). It is acknowledged that it is not clear as to whether lost earnings include future earnings, and this issue shall need to be developed further. In doing so, the court notes that a claim for lost future earnings may be sustainable if it meets three requirements: "(1) the loss must be economic, (2) the loss must be one that the victim would not have incurred but for the criminal conduct, and (3) the criminal conduct must directly cause the economic loss." *Madrid* at 298.

The Court recognizes that the claim for lost future earnings can arguably be somewhat speculative. Further, there are issues relating to inflation, discounting for present value and the like. From the court's perspective, these matters go more to the weight than the threshold entitlement to a claim for lost future earnings.

The court has provided these thoughts so as to ensure the quality of the presentation to be made on whether there is a viable claim for future lost earnings. By setting forth these

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preliminary thoughts, it affords both parties, and particularly defendant, to prepare more fully for the remaining oral argument set for July 11, 2014.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.